

1
2
3
4
5
6
7
8

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

9 ISIDRO VILLANUEVA,

10 *Petitioner,*

11 vs.

12 DIRECTOR, NEVADA DEPARTMENT OF
13 CORRECTIONS, *et al.*

14 *Respondents.*
15

3:10-cv-00225-LRH-VPC

ORDER

16 This matter comes before the Court for initial review under Rule 4 of the Rules Governing
17 Section 2254 Cases (the “Habeas Rules”) as well following upon correspondence (## 6-9) from
18 petitioner regarding, *inter alia*, his possible double payment of the filing fee.

19 Following upon initial review, service will be ordered, subject to the provisions herein. In this
20 regard, the Clerk will be directed to correct the caption as to the first respondent named. Petitioner
21 named the “Director, Nevada Department of Corrections,” not the Department itself, which would be
22 immune from suit as an arm of the State. To the extent that petitioner further sought to name the State
23 of Nevada, the State will be dismissed due to the state sovereign immunity recognized by the Eleventh
24 Amendment. A State is immune from suit in federal court regardless of the relief sought. *See, e.g.,*
25 *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 100-01, 104 S.Ct. 900, 908, 79 L.Ed.2d
26 67 (1984). The Court notes that naming the chief officer in charge of state penal institutions potentially
27 may satisfy the requirements of Habeas Rule 2(a) as to naming the proper respondent. *See, e.g.,*
28 *Rumsfeld v. Padilla*, 542 U.S. 426, 450 n.18, 124 S.Ct. 2711, 2726 n.18, 159 L.Ed.2d 513 (2004).

1 The Clerk will be directed to review the double payment question. The Court notes that ## 4
2 & 5 appear to reflect two different receipts for a \$5.00 fee payment or payments.

3 IT THEREFORE IS ORDERED that the Clerk of Court shall file the petition, shall add Attorney
4 General Catherine Cortez Masto as counsel for respondents, and shall make informal electronic service
5 of this order, together with an electronic attachment with a copy of the petition, upon respondents via
6 a notice of electronic filing.

7 IT FURTHER IS ORDERED that the Clerk shall correct the docket entry reflecting the first
8 respondent named to identify said respondent as “Director, Nevada Department of Corrections,” rather
9 than the “Nevada Department of Corrections.”

10 IT FURTHER IS ORDERED that the Clerk shall correct the docket sheet to reflect the “State
11 of Nevada” as an additional named respondent and further that any claims against the State of Nevada
12 as a respondent shall be DISMISSED without prejudice, leaving the claims against the remaining
13 respondents pending before the Court.

14 IT FURTHER IS ORDERED that respondents shall have thirty (30) days from entry of this
15 order within which to answer, or otherwise respond to, the petition, including by motion to dismiss.
16 **Any response filed shall comply with the remaining provisions below, which are tailored to this**
17 **particular case based upon the Court’s screening and which are entered pursuant to Rule 4 of**
18 **the Rules Governing Section 2254 Cases.**

19 IT FURTHER IS ORDERED that respondents shall first raise any exhaustion defense in a
20 motion to dismiss without other potential defenses. **The Court in particular does not wish to address**
21 **any defenses based upon any lack of specificity in pleading prior to resolving any exhaustion**
22 **issues as to the claims as they currently are pled.** All procedural defenses other than exhaustion shall
23 be reserved to a subsequent motion to dismiss or response. Respondents shall not file a response in
24 this case that consolidates their procedural defenses, if any, with their response on the merits.

25 IT FURTHER IS ORDERED that respondents shall file – and serve upon petitioner – copies
26 of the state court record exhibits relevant to the response.

27 IT FURTHER IS ORDERED that the exhibits filed herein by respondents shall be filed with
28 a separate index of exhibits identifying the exhibits by number. The CM/ECF attachments that are filed

1 further shall be identified by the number or numbers of the exhibits in the attachment, in the same
2 manner as in No. 3:06-cv-00087-ECR-VPC, ## 25-71. The purpose of this provision is so that the
3 Court and any reviewing court thereafter will be able to quickly determine from the face of the
4 electronic docket sheet which exhibits are filed in which attachments.

5 IT FURTHER IS ORDERED that counsel additionally shall send a courtesy copy hard copy of
6 the exhibits to, for this case, the Las Vegas Clerk's Office, with a cover sheet that clearly states
7 "Courtesy Copy – To Staff Attorney."

8 IT FURTHER IS ORDERED that petitioner shall have thirty (30) days from service of the
9 answer, motion to dismiss, or other response to mail a reply or opposition to the Clerk for filing. The
10 deadlines established herein shall override any shorter deadlines established in any form order issued
11 under the *Klingele* decision.

12 IT FURTHER IS ORDERED that henceforth, petitioner shall serve upon respondents or, if
13 appearance has been entered by counsel, upon the individual deputy attorney general identified in the
14 notice of appearance, at the address stated therein, a copy of every pleading, motion or other document
15 submitted for consideration by the Court. Petitioner shall include with the original paper submitted for
16 filing a certificate stating the date that a true and correct copy of the document was mailed to
17 respondents or counsel for respondents. The Court may disregard any paper received by a district judge
18 or magistrate judge which has not been filed with the Clerk, and any paper received by a district judge,
19 magistrate judge or the Clerk which fails to include an appropriate certificate of service.

20 IT FURTHER IS ORDERED that the Clerk of Court **shall send a copy of this order to the**
21 **Financial Administrator of the Clerk's Office**, who shall review the fee payment history for this case,
22 including ## 4 & 5, and if petitioner has overpaid, shall make an appropriate reimbursement if one has
23 not been made previously.

24 The Clerk further shall send petitioner a copy of his petition with this order.

25 DATED this 6th day of April, 2011.

26 

27
28

LARRY R. HICKS
UNITED STATES DISTRICT JUDGE